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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/989,369	11/19/2001	Gregory Alan Whitlow	10541-273	1119

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EXAMINER

FORD, JOHN K

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 12/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/989369	Whitlow et al.	
	Examiner	Art Unit	
	FORD	3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
 Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11-7-02.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
 4a) Of the above claim(s) 5-7, 12-14, 19-21, 29-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-11, 15-18, 22-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5
- 18) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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Applicant's election of the third species of Figures 4 and 5, with traverse, is acknowledged. Applicant has identified claims 1-4, 8-11, 15-18 and 22-28 as readable on the elected species. Applicant's assertions that there would be no burden to searching out the minutia of the various species is unpersuasive given the extensive number of patents in this area. The election requirement is deemed proper and made final. Claims 5-7, 12-14, 19-21 and 29-31 are withdrawn at this time as being directed to non-elected species. Claims 1,4,8,15 and 22-25 are generic according to applicant.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 15-18 and 22-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 15, applicant claims "a condenser" and "side tube disposed adjacently to said condenser". These two limitations taken together are confusing. By disclosure tube 20 has internal passages (within it), which are used to condense refrigerant. There is no tube "disposed adjacently" to said condenser. The tube is used as a condenser, in the Examiner's opinion. What significance the term "side tube" is supposed to have is questionable. The term is without antecedent in the specification and the Examiner does not know what to make of it. The term "end", used three times in claim 15, is also vague. Do you mean the "nose end" as disclosed or one of the two tube ends inserted into the respective inlet and outlet headers? Which is it?

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Claim 22 is written in poor diction. "Automotive" should read --automobile--.

Claim 23 is vague. Precisely what is "residential" supposed to connote as a structural limitation. What feature(s) make (s) this condenser a "residential" condenser? Claim 24 is a contradiction in terms. Oil coolers of the type disclosed by applicant (for use on an automobile) are never condensers. Oil does not enter these oil coolers as a vapor.

Claim 24 is vague because of this inherent contradiction.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 8-11, 15-18 and 22-28 rejected under 35 U.S.C. 102(b) as being anticipated by USP 5653283 (Yoshii et al).

The cover figure of this patent¹ shows two end portions 4F connected to connecting portions 4e (which are parallel to one another) by a bent portion. See specification, col. 4, lines 4-14 of Yoshii et al.

Regarding claims 8-11, Yoshii discloses in col. 4, lines 31-36, that the downstream edge of the heat exchanger has the same formation as shown in Figure 1, with respect to the upstream edge.

Regarding the "end uses" claimed in claims 15-18 and 22-28, the structure claimed does not undergo a metamorphosis into a new structure simply by specifying an intended use in a claim clearly drawn to the structure, per se. See Ex parte Masham 2USPQ 2d 1647 (BPAI 1987).

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.


Claims 1-4, 8-11, 15-18, and 22-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Yoshii (5,653, 283) and Yamamauchi (4, 696, 342).

Yoshii shows all of the claimed structure as explained above, but fails to explicitly contemplate all of applicant's claimed end uses.

Yamamauchi discloses in col. 5, lines 47-52 that laminated type heat exchangers (such as disclosed by Yoshii) can be used as oil coolers, evaporators and condensers in the home or industrial environment.

To have used the laminated type heat exchanger or Yoshii as a automotive condenser (as claimed in applicant's claims 15 and 22) or as an oil cooler (as claimed in applicant's claim 23) would have been obvious sine these end uses are conventional ones in the prior art for which the structure is routinely used, as taught by: Yamamauchi at col. 5, lines 47-52.

Any inquiry concerning this communication should be directed to John K Ford at telephone number 703-308-2636.



John K. Ford
Primary Examiner